

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/422,046	10/20/99	BROWN	S HERO-1-1025

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TM11/0926

EXAMINER  
KALINOWSKI, A

ART UNIT	PAPER NUMBER
2166	7

DATE MAILED: 09/26/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/422,046</b>	Applicant(s) <b>Brown</b>
	Examiner <b>Alexander Kalinowski</b>	Art Unit <b>2166</b>

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on Jun 28, 2001
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 54-66 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 54-66 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- |  |  |
|--|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                   | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 20) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

1. Claims 54-66 are presented for examination. Applicant filed a Request for Continued Examination on 3/20/2001 canceling pending claim 1 and adding new claims 54-66.

### ***Priority***

2. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The second application (which is called a continuing application) must be an application for a patent for an invention which is also disclosed in the first application (the parent or provisional application); the disclosure of the invention in the parent application and in the continuing application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *In re Ahlbrecht*, 168 USPQ 293 (CCPA 1971).

Applicant has claimed that the instant application is a continuation of Application Ser. No. 09/271,217 (now Pat. No. 6,168,563) which is a continuation of Application Ser. No. 08/481,925 (now Pat. No. 5,899,855). The Examiner upon careful review of the specifications has determined that the specification of the instant application and Application Ser. No. 09/271,217 (now Pat. No. 6,168,563) are the same. Therefore, the instant application is a continuation of Application Ser. No. 09/271,217 (now Pat. No. 6,168,563). However, the specification of the instant application and the specification of Application Ser. No. 09/271,217 (now Pat. No. 6,168,563) are different from the specification of Application Ser. No. 08/481,925 (now Pat. No.

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5,899,855). Furthermore, Applicant in Application Ser. No. 09/271,217 (now Pat. No. 6,168,563) has identified the application as a continuation in part of Application Ser. No. 08/481,925 (now Pat. No. 5,899,855). The Examiner suggests that Applicant change the specification to reflect the correct priority to earlier filed applications.

***Request for Continued Examination***

3. The request filed on 3/20/2001 for a Continued Examination (RCE) is acceptable and a RCE has been established. An action on the RCE follows.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 54-66 are rejected under 35 U.S.C. 102(e) as being anticipated by Fujimoto, Pat. No. 5,339,821.

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As to claim 54, Fujimoto discloses a patient interface system for use in collecting and transferring data from a patient to a remote monitoring system (i.e. home monitoring system)(Fig. 1 and col. 2, lines 34-55), said system comprising:

(a) a patient data input and data receiving means (see Figure 1, unit 8) comprising:

- (I) a sensor comprising a monitoring unit for monitoring a physiological parameter and producing a measurement (Fig. 1, unit 1 and col. 3, lines 3-6); and
  - (ii) an interrogation means comprising a means for creating visual and audio signals (Fig. 1, unit 8, col. 2, lines 65-69 and col. 9, lines 1-4);
- (b) a processing means capable of receiving and storing data from said patient data input means (i.e. CPU 25 and memory 33)(Fig. 1, unit 8, Fig. 4, col. 3, lines 30-45);
- © a communication means capable of transferring said processed patient data from said processing means to a remote monitoring system and receiving instructional data from said remote monitoring system (col. 6, lines 18-30 and col. 8, lines 8-13).

As to claim 55, Fujimoto discloses the system according to claim 54, wherein said processing means is further capable of storing a predetermined target value and a series of questions (col. 5, lines 1-13 and line 62 - col. 6, line 9).

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As to claim 56, Fujimoto discloses the system according to claim 55, wherein said processing means is further capable of comparing a sensor measured physiological parameter with said predetermined target value to determine a variance (col. 5, lines 1-13).

As to claim 57, Fujimoto discloses the system according to claim 55, wherein said processing means is capable of accepting and storing a new predetermined target value and series of questions from said remote monitoring system (col. 5, lines 1-13 and line 62 - col. 6, line 9 and lines 18-30).

As to claim 58, Fujimoto discloses the system according to claim 54, wherein said interrogation means further comprises at least one of a keyboard, a plurality of buttons and a microphone (Fig. 2, units 15, 16, and 17).

As to claim 59, Fujimoto discloses the system according to claim 54, wherein said communication means comprises at least one of a modem, a serial interface, a LAN connection and a wireless transmitter (Fig. 1 and col. 2, lines 43-50).

As to claim 60, Fujimoto discloses a patient interface system for use in collecting and transferring data from a patient suffering from a cardiac associated disease to a remote monitoring system (i.e. home monitoring system)(Fig. 1 and col. 2, lines 34-55), said system comprising:

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(a) a patient data input and data receiving means (see Figure 1, unit 8) comprising:

(I) a sensor means comprising monitoring unit for monitoring a physiological parameter and producing a measurement (Fig. 1, unit 1 and col. 3, lines 3-6); and  
(ii) an interrogation means comprising a means for creating visual and audio signals (Fig. 1, unit 8, col. 2, lines 65-69 and col. 9, lines 1-4);

(b) a processing means capable of:

(I) receiving and storing data from said patient data input means (i.e. CPU 25 and memory 33)(Fig. 1, unit 8, Fig. 4, col. 3, lines 30-45);

(ii) storing a predetermined target value and a series of questions (col. 5, lines 1-13 and line 62 - col. 6, line 9);

(iii) comparing said sensor measured diagnostic parameter with said predetermined target value to determine a variance (col. 5, lines 1-13); and

(iv) accepting and storing a new predetermined target value and series of questions from said remote monitoring system (col. 5, lines 1-13 and line 62 - col. 6, line 9 and lines 18-30); and

© a communication means capable of transferring said patient data from said processing means to a remote monitoring system and receiving instructional data from said remote monitoring system (col. 6, lines 18-30 and col. 8, lines 8-13).

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As to claim 61, Fujimoto discloses the system according to claim 60, wherein said interrogation means further comprises at least one of a keyboard, a plurality of buttons and a microphone (Fig. 2, units 15, 16, and 17).

As to claim 62, Fujimoto discloses the system according to claim 60, wherein said communication means comprises at least one of a modem, a serial interface, a LAN connection and a wireless transmitter (Fig. 1 and col. 2, lines 43-50).

As to claim 63, Fujimoto discloses A method for collecting and transferring data from a patient having a condition to a remote monitoring system (i.e. home monitoring system)(Fig. 1 and col. 2, lines 34-55), said method comprising:

(a) obtaining a weight measurement with a monitoring unit for monitoring a physiological parameter and producing a measurement (Fig. 1, unit 1 and col. 3, lines 3-6 and col. 7, lines 25-36);

(b) processing said measurement with a processing means (i.e. CPU 25 and memory 33)(Fig. 1, unit 8, Fig. 4, col. 3, lines 30-45); and

© transferring said processed measurement with a communication means to the remote monitoring system (col. 6, lines 18-30 and col. 8, lines 8-13).

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As to claim 64, Fujimoto discloses the method according to claim 63, wherein said processing comprises comparing said measurement with a predetermined target value to determine a variance, wherein said processing means stores said predetermined target value and a series of questions (col. 5, lines 1-13 and line 62 - col. 6, line 9 and lines 18-30).

As to claim 65, Fujimoto discloses the method according to claim 64, wherein said method further comprises changing at least one of said predetermined target value and series of questions in response to said data (col. 5, lines 1-13 and line 62 - col. 6, line 9 and lines 18-30).

As to claim 66, Fujimoto discloses the method according to claim 63, wherein said condition is a cardiac associated disease (col. 1, lines 49-57).

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***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski, whose telephone number is (703) 305-2398. The examiner can normally be reached on Monday to Thursday from 8:30 AM to 6:00 PM. In addition, the examiner can be reached on alternate Fridays.

If any attempt to reached the examiner by telephone is unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (703) 305-9643. The fax telephone number for this group is (703) 305-0040.

Alexander Kalinowski *au*

9/23/2001

  
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